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No. 05-1485

Supreme Court of the United States
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Joseph S. Maresca — Petitioner Pro-Se

versus

Dr.Elliot L Mancall MD — Respondents
Thomas Jefferson University Hospital

Petitioner's Reply to Respondents
On Petition for a Writ of Certiorari-Filed 3-16-06

To Court of Appeals 3rd Circuit: 04-3103
(Rendell, Fuentes, Opinion by Garth)

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1. The questions presented by the Respondent Reply are too narrow. The Petitioner properly asks the Supreme Court to consider (Q1) the 323(a) Restatement of Torts at EADDY 694 as the governing precedent at the close of Petitioner's Case in Chief because the weight of the testimonies of the Plaintiff, Diplomate Deng, Dr.Waterman-Rheumatologist, Dr. Kellman -Internist, Dr.Lee- Physiatrist, PhD and Dr. Felder-Neurologist/Psychiatrist-Expert set forth the risks of untreated ankylosing spondylitis A134 and the context of the patient's overall condition such that a reasonable person could determine a connection between the physician's breach, the increased risk of harm & the conclusion that sufficient evidence exists to overcome a motion for judgment as a matter of law. Book II A28-A172 Petitioner's (Q2) asks the Court to examine the contrast between the federal law MINE-SSA DI 280, 40.001 and the 5th Circuit 95-60433 Ankylosing Spondylitis case which sets forth the obvious nature of the spinal deformities. MINE-SSA DI 280 defines ankylosing spondylitis as a disease process where "Medical Improvement Is Not Indicated" thereby rendering irrelevant the concept of causality of the disease process. Besides, nowhere does the Pennsylvania statute require a connection between the physician's negligence and causality of the disease. The connection in this case is between the physician's negligence and the lack of treatment leading to incremental pain and suffering in the intervening period 12-5-96 and 9/ 1999. (Q3) deals with a Manifest Injustice to sufferers of Ankylosing Spondylitis, later in life Tay Sachs, later in life Sickle Cell Anemia and Myasthenia Gravis. These are all incurable but treatable diseases. The Petitioner is alive and treating his ankylosing spondylitis a full 10 years after the onset of the disease by the testimony of Diplomate Felder and Diplomate Epstein - the defense expert. A 164

(Q4) by the Petitioner sets forth Fed. Register Vol 63#35 issued 2-23-1998 P. 8990 which requires teaching facilities; such as Dr.Mancall's Outpatient Medical School Clinic, to engage a compliance officer by statute. Judging from the timeline of this legal requirement, Petitioner's claims will have been halved if a compliance officer had reviewed Dr.Mancall's patient file, noted the deficiencies and contacted the patients for the monitoring never done by Dr.Mancall. (Q5) deals specifically with substantial juridical deficiencies noted on A15,16 and A23. It is to be noted that the Honorable Legrome Davis issued an 8-30-2004 second order dismissing the lawsuit WITHOUT PREJUDICE and indicating that the matter was in the Appellate 3rd Circuit and too late for him to act any further. In addition, the Petitioner's questions ask the Supreme Court to distinguish between undefined OBVIOUSNESS criteria in the Pennsylvania law; namely, Brophy v. Brizuela 358 Pa. Super 400, 405, 517 A 2nd , 1293, 1296 (1986) and UNOBVIOUSNESS criteria in Metzelfelt v. Kamrin 526 Pa. , 54 62, 584 A 2nd 888,89 (1990). In addition, neither precedents bar fact witness testimony from consideration or from incorporation into the overall testimony of the expert under Metzelfelt criterion. The Pennsylvania law states that either Brophy v. Brizuela OBVIOUSNESS criteria or Metzelfelt UNOBVIOUSNESS criteria may be chosen; however, both criteria cannot be considered concurrently. In addition, the Respondents have omitted the Petitioner's 1st, 7th, 14th and 21st amendment rights which are argued extensively in the "Cited Authorities" of pp. x- xiii of Petitioner's Writ. The Petitioner's most recent prognosis is total destruction of the sacroiliac & pelvic joints reported in the 3rd Circuit Court of Appeals. [A96 p. 33 ln.1 to A97 sacroiliac joint x-ray deficiency] The Respondents' Brief in Opposition to the Petitioner's Writ fails in a number of other areas; namely,

2. The Court, in its 8-30-04 DENIAL, indicated that it was too late to consider the case further and the Petitioner had to continue the appeals process with the 3rd Circuit. The District Court changed its original DENIAL from with prejudice to WITHOUT PREJUDICE. A.1.

3. The Petitioner's ultimate prognosis is irrelevant by the MINE-SSA DI 280 40.001 which considers ankylosing spondylitis incurable so that the focus moves to treating symptoms and not a cure. Diplomate Felder testified " Its treatment of symptomatology." A. 113 p. 110 ln. 20

4. Diplomate Felder testified conclusively that the Petitioner had ankylosing spondylitis on 12-5-96. A. 88 ln. 12 to A. 114

5. Diplomate Felder did not change his opinion based upon the cross-exam of Bradley Goewert, Esq.
" I would say I still hold those conclusions."
A. 113 P. 115 ln 3. If anything, Diplomate Felder returned back to his original conclusions because Diplomate Deng independently confirmed the Petitioner's range of motion issues a full 6 months prior to Dr.Mancall's 12-5-96 exam.

6. Dr. Mancall had in his possession a memo brought by the Petitioner describing an inability to do a sit-up or run-all pertinent to bone/range of motion issues. Dr.Mancall testified that he read this memo. A. 114; A. 52 pg. 46-7 ln. 15
The Respondents are in error on the matter of Dr.Mancall's witnessing the range of motion issues during the 12-5-96 exam. Also, respondents did not object to the Defendant's admission made part of Dipl.Felder's Trial Examination.

7. Dr. Mancall dissuaded the Petitioner from considering spinal issues when he told the Petitioner "No.No. Don't touch the spine." A. 32 (Trial Exam of the Plaintiff/Petitioner)

8. The Petitioner read Diplomate Felder verbatim from Diplomate Deng's Deposition regarding range of motion issues at the 7-6-96 exam (5 months prior to Dr.Mancall's exam). Essentially, Diplomate Deng opined on all the range of motion issues present on 7-6-96 which never changed subsequently. A. 100 to A 103. The Honorable Judge Davis apparently agrees with the Petitioner because the 8-30-04 dismissal was changed from "prejudice" to a "without prejudice" dismissal of the case.

9. The Petitioner's claim was filed first in the Court of Common Pleas in Philadelphia. The case was moved by the TJUH attorneys due to "diversity" jurisdiction. In reality, these cases are moved from the Court of Common Pleas to the Federal Jurisdiction because federal juries are chosen statewide and the Court of Common Pleas has jurors from the Philadelphia area. These Philadelphia area jurors tend to award Plaintiffs more money than the Federal juries. The Petitioner obtained an 11-22-02 expert letter from Diplomate Felder MD Neurologist and Psychiatrist. The letter opined on the lack of a diagnosis, monitoring and treatment. Diplomate Felder MD discussed all sorts of diagnostic modalities, treatment modalities and linked Dr. Mancall MD directly to the non-diagnosis, non-treatment and incremental pain and suffering. A135 to A 143

Ms. Holly Sands, Esq. of Marshall, Dennehy was assigned the task of obtaining expert letters for the defense. In obtaining these expert letters, the testimony (A28-39) and original deposition of Diplomate Deng was never presented to the defense experts. The Petitioner's memo to Dr. Mancall MD taken to the 12-5-96 encounter was omitted from consideration by the defense experts. Naturally, the defense experts concluded that Dr. Mancall MD performed an examination in accordance with generally recognized standards of medical practice.

Ms. Holly Sands, Esq. left the firm without communicating her exit to the Petitioner. A161 to A165. This very aggressive defense of the defendant by Marshall, Dennehy may not comply with the Commissioner of Insurance for the State of Pennsylvania. The Commissioner's Office expressed concerns that meritorious cases are paid rather than defended with marginal legal tactics. The Petitioner was offered the opportunity to have an insurance investigator placed on the case; however, the Petitioner declined to do so until the underlying litigation concludes.

10. The Petitioner had obtained his medical record from the TJUH, Inc. institutional medical records early in 2001 prior to commencing this lawsuit. The medical record consisted of the 12-5-96 encounter form of Dr. Mancall MD, 3 letters written to Dr.Mancall MD by the Petitioner subsequent to the 12-5-96 encounter, a typed memo brought to the 12-5-96 encounter (describing the inability to do a sit-up and run) and a 12/1991 blood test from the 8/1991 visit to Dr.Mancall at the Hahnemann Hospital. A115-116, A117- A125; A113 p.85

11. At the 7-24-02 deposition of Dr.Mancall MD-Neurologist and Defendant, only the Thomas Jefferson University Hospital encounter form was offered as the medical record.
Either the doctor or a staff member had accidentally or willfully destroyed the remainder of the medical record secured by the Petitioner much earlier in 2001. The Petitioner secured the entire medical record by requesting the TJUH, Inc. medical records facility to produce copies prior to commencing the lawsuit. At the 7-24-02 deposition of Dr. Mancall MD, the plaintiff produced date-stamped copies of his letters to Dr. Mancall MD and the letter brought to the 12-5-96 examination by the plaintiff. When these letters were produced by the plaintiff,

the defendant's attorney, Ms. Cynthia Brennan, Esq. placed her head in hand because the hospital was prepared to admit the encounter form only. As with Ms. Holly Sands, Esq., Ms. Cynthia Brennan, Esq. left the litigation shortly after this deposition and was never seen or heard from again.

12. The trial record at the District Court commenced 5-3-04 with the Plaintiff testifying on 5-3-04. Diplomate Deng, (A28-39) Acupuncturist testified in person on 5-4-04. A videographer set up equipment in the District Court in order to run video presentations of Dr. Waterman MD-Rheumatologist, A57-71; Dr. Raphael Kellman MD-Internist A72-82 & Diplomate Felder MD-Neurologist, . A83-143

These presentations ran 5-4-04 through the morning of 5-5-04. Following the videos, selected excerpts of Dr. Lee MD, PhD were read into the record by the Plaintiff, Messrs. Goewert, Esq. and Dorothy Duffy, Esq. for the defendants. A144 to A 160

13. Afterward, the Petitioner cited an exhaustive group of Exhibits ; wherein, the Court pronounced its concurrence into the record as evidentiary matter to be considered by the District Court and jury.

{ A115-128; A39-43; A67-69; A79-83; A66-71; A156-160; A129-130; A135-143; A133; A55-56; A131-2 }

The District Court noted the conclusion of Plaintiff/Petitioner's Case in Chief and the Civil Rule 50 argument was invoked.

14. The matter of the Supreme Court review will involve the sufficiency of the totality of the Plaintiff's Case in Chief Presentation as to obviousness criteria in the law, unobviousness criteria in the law and Eaddy at 694 criteria as well as whether or not the District Court employed good juridical practices including the "reserve of judgment" until completion of the Defense Cases in Chief. The Petitioner's 1st, 7th, 11th, 14th and 21st amendment rights are before the Supreme Court for review together with the Federal Register Vol 63 #35 issue 2-23-1998 P.8990 which requires a "Compliance Officer" in medical school facilities/institutions. DC Docket 26 & 30(DENIED). A 166-A172.

15. The medical record of Dr.Mancall MD-Neurologist is before the United States Supreme Court. A115-A116. The top portion of the medical record was prepared by an unknown medical student. The pain and suffering of the Petitioner is causally connected to Dr.Mancall's examination and medical encounter form of the TJUH. The worsening of the pain after typing on the computer is causally connected to the workplace. There is a partially implemented plan with no followup. A116 " Plan MRI, If Okay. Fiorinal, return post-MRI. "

16. A Brain-MRI was returned to Dr.Mancall citing cerebellar atrophy which is nowhere on the encounter form. Dr.Mancall MD-Neurologist has come to no conclusion about whether or not this cerebellar atrophy is problematic. The risks of untreated ankylosing spondylitis were noted by Petitioner's expert Dr. Felder MD-Neurologist, Psychiatrist A134, A111-114. The professional literature citation on A134 mentions cerebrovascular disease as a prominent risk of untreated ankylosing spondylitis. A115 to A119

17.. On February 13, 1997, the Plaintiff/Petitioner wrote Dr. Mancall MD reporting that Imitrex 25 mg. was being taken. On A120 and A121, the cost of this medication is reported over $10.00 per pill. The Fiorinal drug listed above is slightly over $1. per pill and Dr.Mancall is not objecting to the Plaintiff/Petitioner taking a pill that is nearly 10 times more expensive than Fiorinal. For this reason alone, the Petitioner believes that Dr.Mancall MD prepared the encounter form some time after 12-5-96 and that the preparation of the encounter form could be in the nature of a fraud in de factum. A49 ln. 23 ; A50

In addition, it's the Petitioner who is following up on the case by writing 3 unanswered letters to Dr.Mancall MD. There are no notations about monitoring on the face of the Thomas Jefferson University Hospital encounter form. A. 115, 116. In addition, Dr.Mancall dissuaded the Petitioner from a spinal diagnosis. A. 28- A. 32 For this reason, Petitioner's subsequent memos to Dr.Mancall do not mention the spine again. In effect, Dr.Mancall succeeded in de-railing a correct diagnostic impression by Diplomate Deng. A.33 to A.39 Dr.Mancall did double damage. He made a mis-diagnosis and dissuaded the Petitioner from a correct diagnostic impression by Dipl.Deng.

18. On September 30, '96, a full 2 months prior to the visit to Dr. Mancall MD- the Health Insurance Portability and Accountability Act of 1996 PL104-191 was put into effect. It requires the Secretary of HHS to adopt security standards and establish policies and procedures to prevent unauthorized access to data. Those persons who maintain and transmit health care data must apply reasonable and appropriate administrative, technical and physical standards to ensure the integrity of medical information.

Federal Register Vol 63 #35 issue 2-23-1998 P.8990 requires a "Compliance Officer" in medical school facilities/institutions. The Secretary of HHS has designated the OIG to enforce the provisions of this part.

19. The Pennsylvania Medical Board has disciplinary discretion over all physician registrants in the State of Pennsylvania. The Joint Commission on Hospital Accreditation , Commissioner Richard Frankenstein MD, has authority to review hospital standards. These avenues are open to patients generally; however, only the District Court or the Court of Common Pleas can referee a proceeding that awards financial damages for pain & suffering, financial loss & non-monitoring/mis-diagnosis.

20. Another problem with referring Dr.Mancall's deposition, encounter form of TJUH and the Petitioner's memos written to Dr.Mancall involves the plenary jurisdiction of the Board of Medicine over Dr.Mancall. Once these matters have been referred, the Petitioner can't ask that the investigation be dropped if Dr.Mancall's insurers decide to pay the case. If Dr. Mancall has destroyed any of the evidence or withheld the medical student witness from testifying, the Petitioner cannot insulate Dr.Mancall from criminal liability. For these reasons, together with the 11-22-02 expert letter, the Petitioner & Court tried to prevail upon the insurers to pay a reasonable settlement on the case. The Board of Medicine in the State of Pennsylvania has the authority to referee a Professional Malpractice Trial of the Respondents in this case.

22. Petitioner's Objections to Respondents' questions on facts not in evidence: (1-16-04 Trial Exam of Dipl.Felder) Appellate Court Appendix Pages : A 126- A. 131

p. 88 ln. 4-12; p. 90 ln. 1-16; p. 94 ln. 7-16

p. 100 ln. 13 Petitioner's reference to Diplomate Deng's testimony on range of motion issues

p. 108 Petitioner's reference to documented complaint of inability to do a sit-up or run ln. 4; p. 109 ln. 15-16

23. This case is about the Petitioner's misplaced trust in Dr. Mançall MD-Neurologist/Surgeon since 1959, as well as, the TJUH, Inc. medical school staff. The last place a member of the public would expect a mis-diagnosis is a medical school. The academic rigors and environment of such an institution should be well beyond reproach in every respect. Today's artificial intelligence software will produce a diagnosis even without a physician. Dr.Mancall was assisted by a medical student albeit an unknown one. The Petitioner forwarded Ms. Cynthia Brennan, Esq. a potential list of medical students who could have taken the history on 12-5-96. These names included William Wong and Michael Oh. Shortly afterward, Ms. Cynthia Brennan, Esq. was never heard from ever again. Contrary to Mr. Goewert's highly improper questioning, Dr. Mancall admitted to reading the memo brought by the Petitioner to the 12-5-96 examination. Book II- A. 52 ln. 16; A53, A54, A125 Diplomate Deng confirmed all of the gross range of motion spinal symptomatology in Book II A. 33 to A. 39. This confirmation was a full 5 months prior to Dr.Mancall's exam. Dr.Raphael Kellman MD-Internist confirmed 9-15-99 as the date which the Petitioner would have been first told of the disease ankylosing spondylitis. Book II- A. 77. The three year period of a non-diagnosis is confirmed by independent fact witnesses including Dr. Waterman MD-Rheumatologist. A59 to A71 with emphasis on A. 68 to confirm 9-15-99 as the date the Petitioner would have been informed of the disease Ankylosing Spondylitis by Dr.Waterman MD. " I spoke with Mr.Maresca today (9-15-99). " A. 68

The Petitioner should be compensated reasonably for the period of non-diagnosis, non-treatment and the interminable strife of a litigation through the DC, 3rd Circuit Appellate and United States Supreme Court. The Petitioner was forced to spend monies that could have been earmarked for treatment because Dr.Mancall consciously gave plausibly deniable testimony instead of admitting his errors and paying the case so that the parties could have returned to normalcy.